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November 3, 2022

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Annexation CL 22-003 to County Service District No. 1

| | |
|--|---|
| Purpose/Outcomes | Conduct Public Hearing/Approve Order |
| Dollar Amount and Fiscal Impact | None |
| Funding Source | Not Applicable |
| Duration | Permanent |
| Previous Board Action | None |
| Strategic Plan Alignment | Build Public Trust Through Good Government, hold transparent and clear public processes regarding jurisdictional boundaries |
| Counsel Review | JM 10/18/2022 |
| Procurement Review | No, matter is an annexation not subject to procurement review |
| Contact Person | Ken Martin, Boundary Change Consultant – 503-222-0955 Jeff Munns, Assistant County Counsel – 503-742-5984 |
| Contract No. | Not Applicable |

BACKGROUND

The County Board is charged with making boundary change decisions (annexations, withdrawals, etc.) for many types of special districts (water, sanitary sewer, rural fire protection, etc.) within the County. One type of special district over which the Board has jurisdiction is a county service district and Clackamas County Service District #1 is such a district.

Proposal No. CL 22-003 is a proposed annexation to Clackamas County Service District # 1 (“District”).

State statute and the Metro Code require the Board to hold a public hearing on the proposed annexation. Notice of this hearing invited testimony from any interested party. Notice consisted of: 1) Posting three notices near the territory and one notice near the County hearing room 20 days prior to the hearing; 2) Notice posted online (<https://www.clackamas.us/meetings/bcc/business/2022-11-03>); 3) Published notice twice in

the Clackamas Review; 4) Mailed notice sent to affected local governments and all property owners within 100 feet of the area to be annexed.

As required by statute the Board of the District has endorsed the proposed annexation. Also as required by statute (ORS 198.720(1)) the City of Happy Valley has approved this petition.

This proposal was initiated by a consent petition of property owners. The petition meets the requirement for initiation set forth in ORS 198.857, ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040(a) (lists Metro's minimum requirements for petition). If the Board approves the proposal the boundary change will become effective immediately.

REASON FOR ANNEXATION

The property owners desire annexation into the District to serve the existing single family dwelling on the property.

CRITERIA

Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City. The District has entered into an agreement with the Surface Water Management Agency of Clackamas County and the Tri-City Service District to create Water Environment Services, an ORS 190 partnership ("WES") as a collective service provider for all three districts. If annexed into the District, the property would be served by WES under such agreement.

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
3. The proposed effective date of the boundary change.

Service availability is covered in the proposed findings. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date (immediately upon adoption) was noted above.

To approve a boundary change, the reviewing entity [the County Board] must apply the

¹ A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
 - (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plan as stated in the findings attached in the proposed order. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and the Metro Code requirements, and found that the subject property is eligible for annexation to the District. A draft order with proposed findings is attached hereto for the Board's consideration. The territory, if annexed into the District, will be served (major transmission and treatment) by Water Environment Services pursuant to that certain ORS 190 Partnership entered into by the District with Clackamas County Service District # 1 and the Surface Water Management Agency of Clackamas County, as amended from time to time.

RECOMMENDATION

Based on the attached Order and Findings, Staff recommends approval of Proposal No. CL-22-003, annexation to Clackamas County Service District # 1.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Approving a
Boundary Change Proposal No.
CL 22-003



Order No. _____

This matter coming before the Board at this time, and it appearing that the owner of all the land in the territory to be annexed has petitioned to annex the territory to Clackamas County Service District No. 1;

It further appearing that this Board is charged with deciding this proposal for a boundary change pursuant to ORS Chapters 198 and Metro Code 3.09; and

It further appearing that staff retained by the County have reviewed the proposed boundary change and issued a report which complies with the requirements of Metro Code 3.09.050(b); and

It further appearing that this matter came before the Board for public hearing on November 3, 2022 and that a decision of approval was made on November 3, 2022;

NOW, THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. CL 22-003 is approved for the reasons stated in attached Exhibit A and the territory described in Exhibit B and depicted on Exhibit C is annexed to Clackamas County Service District No. 1 as of November 3, 2022.

ADOPTED this 3rd day of November, 2022.

BOARD OF COUNTY COMMISSIONERS

Tootie Smith, Chair

Anthony Mayernik, Recording Secretary

FINDINGS

Based on the study and the public hearing the Board found:

1. The territory to be annexed contains 2.0 acres and 1 single family dwelling .
2. The property owners desire annexation into the District to serve the existing single family dwelling on the property.
3. Oregon Revised Statute 198 directs the Board to “consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.”

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City. The District has entered into an agreement with the Surface Water Management Agency of Clackamas County and the Tri-City Service District to create Water Environment Services, an ORS 190 partnership (“WES”) as a collective service provider for all three districts. If annexed into the District, the property would be served by WES under such agreement.

4. Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:
 1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
 2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
 3. The proposed effective date of the boundary change.

Service availability is covered in the findings below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date is immediately upon adoption.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

¹ A “necessary party” is another governmental entity which includes the same area or provides an urban service to the area.

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
 - (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plans as stated in the findings below. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and the Metro Code requirements, and found that the subject property is eligible for annexation to the District.

5. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall “. . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195.” ORS 197.015 says “Metro regional framework plan means the regional framework plan required by the

1992 Metro Charter or its separate components.” The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

6. The PUBLIC FACILITIES AND SERVICES Element of the County Comprehensive Plan contains the following Goal:

POLICIES

Sanitary Sewage Disposal

* * *

- 6.0 Require sanitary sewerage service agencies to coordinate extension of sanitary services with other key facilities, i.e., water, transportation, and storm drainage systems, which are necessary to serve additional lands.

7. The territory is inside the City of Happy Valley and its land use plan designation/zoning is RRFF. The property is developed with a single family dwelling in compliance with the existing zoning.
8. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. There are no urban service agreements under ORS 195 relative to sewer service in this area of Clackamas County.
9. WES, as the service provider for the District, has an 8-inch line in SE Aldridge Road that can serve the property.
10. The Sunrise Water Authority serves the area.
11. The area receives police service from the City of Happy Valley which contracts with the Clackamas County Sheriff’s Department for service.
12. The territory is within the Clackamas County R.F.P.D. #1. This service will not be affected by annexation to the County Service District for sanitary sewers.

CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the Board determined:

1. The Metro Code requires the boundary change decision to be consistent with expressly applicable provisions in any urban service provider agreements, cooperative agreements and annexation plans adopted pursuant to ORS 195. As noted in Findings 4 & 8 there are no such agreements or plans in place in this area. The Board concludes that its decision is not inconsistent with any such agreements and plans.
2. The Metro Code calls for consistency between the Board decision and any "applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services." The Board notes the original public facility plan for this area does call for sewer service by the District.
3. ORS 198 requires consideration of the comprehensive plan and any service agreements affecting the area. The Board has reviewed the applicable comprehensive plans (Clackamas County Comprehensive Plan and the Happy Valley Comprehensive Plan) and concludes this proposal complies with them. All other necessary urban services are available.
4. The Board considered the timing & phasing of public facilities to this area, the quantity and quality of services available and the potential for duplication of services. The District, through Water Environment Services, has service available to the area to be annexed as noted in Finding No. 9. The Board concludes this annexation is timely, the District has an adequate quantity and quality of services available and that the services are not duplicative.
5. The Metro Code at 3.09.050 (B) (2) requires a determination of whether the boundary change will cause withdrawal of the territory from the boundary of any necessary party. An examination of this issue found that no such withdrawals would be caused by approval of this annexation.

EXHIBIT "B"
LEGAL DESCRIPTION

A parcel of land in the Southeast one-quarter of the Southeast one-quarter of Section 35, Township 1, South, Range 2 East of the Willamette Meridian, in the City of Happy Valley, County of Clackamas and State of Oregon, described as follows:

Beginning at a brass monument at the Southeast corner of said Section 35; thence North $0^{\circ}43'13''$ West along the East line of Section 35, a distance of 869.04 feet to a point on the South line of that certain easement described in Book 607, Page 720, Deed Records; thence North $89^{\circ}14'30''$ West a distance of 322.03 feet to the true point of beginning of the tract herein described; thence, from said true point of beginning South 393.55 feet to a point on the South line of a tract of land as described in a Contract to Robert Schloth Kaiser, a single man recorded November 9, 1966, in Book 682, Page 205, Deed Records; thence South $89^{\circ}14'30''$ East a distance of 107.36 feet to the Southeast corner of said Kaiser Tract; thence North, along the East line of said Kaiser Tract a distance 50.67 feet; thence North $88^{\circ}52'$ East 131.17 feet; thence North 338.55 feet; thence North $89^{\circ}14'30''$ West a distance of 238.51 feet to the true point of beginning..

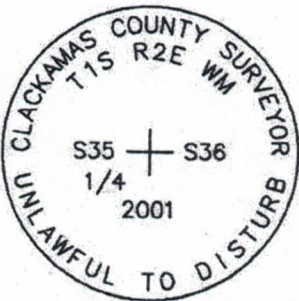


EXHIBIT "C" ANNEXATION EXHIBIT MAP

LOCATED IN THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER, AND THE SOUTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SECTION 36, TOWNSHIP 1 SOUTH, RANGE 2 EAST, W.M. CLACKAMAS COUNTY, OREGON

TRACT C
"NORTHVIEW AT HAPPY VALLEY HEIGHTS"

POINT OF BEGINNING ONE-QUARTER SECTION CORNER COMMON TO SECTIONS 35 AND 36, T1S, R2E, WM PER U.S.B.T. ENTRY 2001-101

DOCUMENT NUMBER 2001-074921

LOT 19 "CLAREMONT AT HAPPY VALLEY"

DOCUMENT NO. 2009-062196

S88°39'38"E 327.02'

KRAUSE LN

N02°10'40"E 668.87'

S02°11'14"W 669.76'

DOCUMENT NUMBER 2018-066901

1S2E36CB-05600, 05690
DOCUMENT NUMBERS 2015-008818 AND 97-086688
218,818 SQ. FT. OR 5.02 ACRES +/-

N88°30'20"W 326.89'

LOT 14 "TUSCAN HILLS"

SE TOSCANA PL

LOT 15 "TUSCAN HILLS"

LOT 16 "TUSCAN HILLS"

LOT 17 "TUSCAN HILLS"

SE VIOLA VINEYARD DR



SCALE 1" = 150'

REGISTERED PROFESSIONAL LAND SURVEYOR

John T. Campbell
OREGON
JULY 15, 2003
JOHN T. CAMPBELL
60073

RENEWS: 12-31-2021

SEE ATTACHED LEGAL DESCRIPTION



Harper Houf Peterson Righellis Inc.

ENGINEERS • PLANNERS
LANDSCAPE ARCHITECTS • SURVEYORS

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COVER SHEET

- New Agreement/Contract
- Amendment/Change/Extension to _____
- Other Board Order for Annexation

Originating County Department: County Counsel

Other party to contract/agreement: _____

Document Title: Approval of Annexation CL 22-003 to County Service District No. 1

After filing please return to: Jeffrey Munns, Asst. County Counsel

County Admin

Procurement

If applicable, complete the following:

Board Agenda Date/Item Number: _____